

July 13, 2004
FOR IMMEDIATE RELEASE

THIS IS NOT AN OFFICIAL
STATEMENT OF THE COURT,
BUT IS INTENDED SOLELY
FOR THE CONVENIENCE OF
THE PRESS.

IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 90

JONATHAN WALKER and AMY)	
WALKER, husband and wife, BYRON)	
MENG and GLEA MENG, husband and wife,)	
MAX MENG, RONALD HUTCHINGS,)	
BRENT MENG, GUY MENG and DARYL)	
MENG, husband and wife, ANITA JENNE,)	
GARY PARK and CHERYL PARK, husband)	
and wife, PAUL DRAKE and LUELLA)	
DRAKE, husband and wife,)	Docket No. 29065
)	
Plaintiffs-Respondents,)	
)	
v.)	
)	
KEN BOOZER and LISA BOOZER,)	
husband and wife,)	
)	
Defendants-Appellants.)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

The judgment of the district court is affirmed in part and reversed in part.

Franklin N. Smith Jr., Pike & Smith, PA, Idaho Falls, for appellants. Franklin N. Smith Jr. argued.

Scott R. Hall, Anderson, Nelson, Hall, Smith, Idaho Falls, for respondents. Scott R. Hall argued.

This case came to the Idaho Supreme Court from the district court's denial of the Boozers' request seeking review by the district court of its earlier decision, which defined the width of an easement between the parties to the lawsuit.

On November 29, 2001, the Walkers et al. (Quaker Haven Owners) brought suit in the district court asking the district court to define the width of an easement that allowed for use of a roadway that ran across the Boozers' property. The Boozers filed their own lawsuit with the district court asking the court to stop the Quaker Haven Owners from widening the easement beyond the original description in the deed. The Boozers also asked the district court to make the Quaker Haven Owners help pay for past expenses the Boozers had incurred in maintaining the roadway easement.

After a trial, the district court defined the width of the roadway easement and denied the Boozers' request to make the Quaker Haven Owners pay for past expenses the Boozers incurred in maintaining the roadway easement. The Boozers then asked the district court to reconsider its earlier decision.

After reviewing the law and the facts, the district court agreed with its earlier decision. The district court also awarded attorney fees to the Quaker Haven Owners for the fees they incurred in defending against the Boozers' request. The Boozers appealed the decision of the district court to this Court.

This Court affirms in part and reverses in part the judgment of the district court. The district court's conclusion that the easement should be 22 feet of road surface in width, plus two feet of the embankment, for a total width of 24 feet, and that it is within the boundaries of the historical use of the easement is supported by substantial and competent evidence. The district court did not err in denying the Boozers' counterclaim for contribution because the Boozers failed to show the easement owners' maintenance of the easement created an additional burden or an interference that would damage the servient estate. The district court did not err by granting the preliminary injunction because the Boozers failed to show the district court abused its discretion. The district court's award of attorney fees is reversed because the authority cited by the district court does not support such an award. No attorney fees are awarded on appeal. Costs are awarded to the Respondents.